

FILED
U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION
2011 MAR 10 AM 11:21

ADAIR JOHNSON,

Petitioner,

vs.

ANTHONY HAYNES, Warden,

Respondent.

CLERK 
SO. DIST. OF GA.

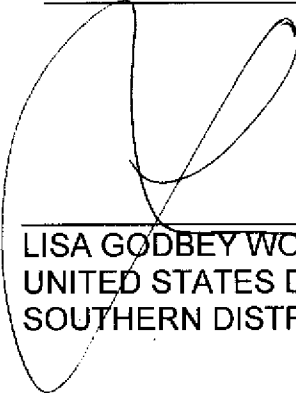
CIVIL ACTION NO.: CV210-111

ORDER

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Johnson states that the Magistrate Judge improperly dismissed his 28 U.S.C. § 2241 petition because 28 U.S.C. § 2255 is an improper vehicle for challenging the restitution portion of a sentence. Johnson's petition challenged the discrepancy between the oral pronouncement of his sentence and the written judgment, which is properly brought as a § 2255 motion. See Williams v. Corbin, CV108-82, 2008 WL 5085113, *2 (S.D.Ga. Dec. 2, 2008). If, as Johnson claims in his Objections, he is solely challenging the restitution portion of his sentence, he cannot proceed with his petition. The Eleventh Circuit has held that "habeas corpus cannot be used to challenge just the restitution part of a sentence when the custody supporting [] jurisdiction is actual imprisonment." As custody supporting this Court's jurisdiction over Johnson is actual imprisonment, he cannot use § 2241 to challenge the restitution portion of his sentence.

Johnson's Objections to the Magistrate Judge's Report and Recommendation are without merit. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Johnson's 28 U.S.C. § 2241 Petition is **DISMISSED**. The Clerk of Court is directed to enter the appropriate Judgment of dismissal.

SO ORDERED, this 10 day of March, 2011.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA